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Carole Migden, Friends of Carole Migden
Committee, and Re-Elect Senator Carole
Migden Committee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CAROLE MIGDEN, et al.,

Plaintiffs,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES
COMMISSION, et al.,

Defendants.

No.: 2:08-CV-00486-EFB

**DECLARATION OF CAROLE MIGDEN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing:

Date: April 16, 2008

Time: 10:00 a.m.

Ctrm.: 25

(The Honorable Edmund F. Brennan)

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1. I am a resident and registered voter of the City and County of San Francisco, California. I am an incumbent Senator of the State of California representing the 3rd Senate District, which encompasses Marin County and parts of the City and County of San Francisco and Sonoma County. My current term of office ends in December 2008. I am running for re-election and am seeking the nomination of the Democratic Party in the statewide primary election scheduled for June 3, 2008. Prior to becoming a state Senator, I served on the State Board of Equalization from 2002 through 2004, and I represented San Francisco in the State Assembly from 1996 through 2002. I am very familiar with the voters and issues in my district, and know first-hand what it takes to run a successful campaign for state office in my district.

3. I did not use my pre-Proposition 34 funds when I ran for State Board of Equalization in 2002 largely because the Democratic primary election for that seat was uncontested. I

1 also did not use my pre-Proposition 34 funds during my initial successful bid for a state Senate seat
2 in 2004. Beginning in 2003, we reported the pre-Proposition 34 funds on the campaign reports I filed
3 in connection with my Senate 2004 Committee so that the public could keep track of the funds while I
4 held that office. However, I did not spend any of the money on that 2004 election and the money
5 remained in a separate interest-bearing account until 2006.

6 4. In late October 2006, I transferred approximately \$350,000 of those pre-
7 Proposition 34 funds from the separate interest-bearing account to my Senate 2008 Committee
8 checking account. At the time I did not know that there was any legal impediment to transferring the
9 funds because I did not know or suspect that the FPPC would consider those funds surplus. I am
10 unaware of any other candidate with pre-Proposition 34 funds who has been told not to use those funds
11 on another election campaign.

12 5. In the spring of 2007, I transferred the remaining balance of pre-Proposition 34
13 funds from the separate interest-bearing account to my regular Senate 2004 Committee checking
14 account. That balance of pre-Proposition 34 funds in my Senate 2004 Committee account is now
15 \$647,000. I intended to transfer those pre-Proposition 34 funds to my Senate 2008 Committee on an
16 as-needed basis and would have done so had I not received the FPPC's October 29, 2007 letter
17 ordering me to refrain from transferring those funds or otherwise spending them on my upcoming
18 primary election.

19 6. The committee that I established for the 2008 Senate election, "Re-Elect Senator
20 Carolc Migden," currently has a balance of approximately \$150,035.34 available for the June primary
21 election. If I could transfer the \$647,000 in pre-Proposition 34 funds that I have in my Senate 2004
22 Committee to my 2008 Committee for use in the primary election, I would have more than four times
23 the amount I currently have to engage in communications with the voters in my district. Those funds
24 would make a tremendous difference in how I conduct my campaign.

25 7. Three well-known challengers have announced that they intend to challenge me
26 in the June primary election. Voter registration in the 3rd Senate District leans heavily democratic,
27 making the June primary the critical race in the election cycle. Given the crowded field, it is essential
28 that I have the resources to communicate with voters from San Francisco to Sonoma. If I could use the

1 pre-Proposition 34 funds in my 2004 Committee for this election, I would spend the funds on, among
2 other things, campaign mail, events, cable television and radio advertisements, and get-out-the-vote
3 activities. Some of these activities, such as producing the mailings and securing time on radio, must
4 begin as soon as possible, and certainly no later than early April, in order to reach voters before
5 absentee ballots are mailed. If I do not have access to those funds, then instead of planning my direct
6 mail activities, I will be planning and appearing at additional fundraising events to secure the funds
7 necessary to effectively communicate with my constituents. Given the contested nature of my race and
8 the number of other very important races occurring this year, including the presidential campaign, I
9 can say with confidence that I will not be able to make up in fundraising over the next two months
10 anywhere near the \$647,000 that I already have accumulated but cannot use.

11 8. The campaign is already under way, and it is essential for campaign planning
12 purposes that I know as soon as possible whether I can use my pre-Proposition 34 funds. My access to
13 these funds will dictate many of the strategy decisions I make and whether I spend the next weeks
14 fundraising or campaigning. If I am not able to use the pre-Proposition 34 funds in my 2004 Senate
15 Committee, my ability to communicate with the voters in my district and secure their votes in the June
16 primary will be severely hindered.

17 I declare under penalty of perjury, under the laws of the State of California, that the
18 foregoing is true and correct and that this declaration was executed on March 9, 2008 at
19 San Francisco, California.

20
21 
22 CAROLE MIGDEN

23 (00052775-6)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within
4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On March 7, 2008, I served a true copy of the following document(s):

6 **Declaration of Carole Migden in Support of**
7 **Plaintiffs' Motion for Preliminary Injunction**

8 on the following party(ies) in said action:


9 Scott Hallabrin, General Counsel *Attorneys for Defendants*
10 Lawrence T. Woodlock,
11 Senior Commission Counsel
12 Fair Political Practices Commission
13 428 "J" Street, Suite 620
14 Sacramento, CA 95814-2329
15 Phone: (916) 322-5660
16 Fax: (916) 327-2026
17 Email: shallabrin@fppc.ca.gov
18 Email: lwoodlock@fppc.ca.gov

- 14 ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
15 envelope or package addressed to the person(s) at the address above and
16 ☐ depositing the sealed envelope with the United States Postal Service, with
17 the postage fully prepaid.
18 ☐ Placing the envelope for collection and mailing, following our ordinary
19 business practices. I am readily familiar with the businesses' practice for
20 collecting and processing correspondence for mailing. On the same day
21 that correspondence is placed for collection and mailing, it is deposited in
22 the ordinary course of business with the United States Postal Service,
23 located in San Leandro, California, in a sealed envelope with postage fully
24 prepaid.
25 ☒ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope
26 or package provided by an overnight delivery carrier and addressed to the persons
27 at the addresses listed. I placed the envelope or package for collection and
28 overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.
☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or
package addressed to the persons at the addresses listed and providing them to a
professional messenger service for service.

1 ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
2 at the fax numbers listed based on an agreement of the parties to accept service by
3 fax transmission. No error was reported by the fax machine used. A copy of the
4 fax transmission is maintained in our files.

5 ☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at
6 the email addresses listed based on a court order or an agreement of the parties to
7 accept service by email. No electronic message or other indication that the
8 transmission was unsuccessful was received within a reasonable time after the
9 transmission.

10 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
11 March 7, 2008, in San Leandro, California.

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13 _____
14 Kristen Snider
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